

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Flexibility for Delivery of Communications by)	IB Docket No. 01-185
Mobile Satellite Service Providers in the)	
2 GHz Band, the L-Band, and the 1.6/2.4 GHz)	
Bands;)	
)	
Review of the Spectrum Sharing Plan Among)	
Non-Geostationary Satellite Orbit Mobile)	
Satellite Service Systems in the 1.6/2.4 GHz)	IB Docket No. 02-364
Bands)	
)	

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules,¹ the Cellular
Telecommunications & Internet Association ("CTIA")² files the following Reply to
Oppositions³ to CTIA's Petition for Reconsideration of the Commission's *MSS/ATC*

¹ 47 C.F.R. § 1.429 (2003).

² CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

³ See *Consolidated Opposition of ICO Global Communications Holdings Limited*, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, FCC 03-15, ("ICO Opposition") (filed August 20, 2003); see also *Consolidated Opposition of Globalstar, L.P.*, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, FCC 03-15, ("Globalstar Opposition") (filed August 20, 2003); *Consolidated Opposition to and Comments on Petitions for Reconsideration, Mobile Satellite Ventures Subsidiary LLC*, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, FCC 03-15, ("MSV Opposition") (filed August 20, 2003); See *Opposition of the*

*Report and Order.*⁴ Based on comments in each of the Oppositions to CTIA's Petition for Reconsideration, CTIA's concerns about possible attempts to "game" the ancillary requirement have only been magnified and, accordingly, CTIA reiterates its call for the Commission to adopt more rigorous gating criteria that would "ensure that the added terrestrial component remains ancillary to the principal MSS offering."⁵ Further, as discussed below, comments in several of the Oppositions confirm that the Commission must clarify several issues discussed in the MSS/ATC Order.

I. DISCUSSION

As discussed below, based on comments in the Oppositions of Mobile Satellite Ventures Subsidiary LLC, ICO Global Communications Limited, Globalstar, L.P., and The Boeing Company, CTIA reiterates its concern that the gating criteria the Commission adopted are not adequate to achieve the stated goal of maintaining Ancillary Terrestrial Component ("ATC") service as "ancillary." The Commission should ensure there are no loopholes that enable MSS to provide ATC service not in conformance with the Commission's intent. Additionally, based on comments contained in the Opposition of ICO Global Communications, CTIA reaffirms its desire for the Commission to clarify that Personal Data Assistants and other computing devices should be included in the integrated service offering requirement, and that MSS licensees should not be able to use

Boeing Company, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, FCC 03-15, ("*Boeing Opposition*") (filed August 20, 2003).

⁴ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order, IB Docket No. 01-185, FCC 03-15, "*MSS/ATC Report and Order*". (Published in the Federal Register on June 5, 2003).

⁵ *MSS/ATC Report and Order* at ¶ 1.

the satisfaction of gating criteria and milestones in one band as a means to seek ATC authority in another band.

II. COMMENTS OF OPPOSING PARTIES CONFIRM THAT MORE RIGOROUS GATING CRITERIA ARE NECESSARY TO ENSURE ATC WILL REMAIN AN ANCILLARY SERVICE

As CTIA stated in its Petition for Reconsideration, the Commission did not do enough to “ensure that the added terrestrial component remains ancillary to the principal MSS offering.”⁶ CTIA continues to believe that is the case. ICO Communications disagrees, arguing that the gating criteria requiring MSS licensees to “launch their satellite systems before they can offer ATC service to a single customer [provides] ample incentives for MSS licensees to market aggressively and provide quality satellite service.”⁷ CTIA would argue, however, that the upfront satellite costs act merely as an entrance fee to provide satellite/terrestrial service and do not act as a guarantee that any significant satellite service is available, and that the ATC service is ancillary to that satellite service.

In its Petition for Reconsideration, CTIA proposed criteria that would preserve the primacy of the satellite offering. CTIA proposed requiring “that the capacity in any satellite antenna beam is never reduced by more than 20% from what it would be in the absence of an ancillary terrestrial component,” or limiting “the minutes of use on the ATC to 20% of the minutes used on the satellite service.”⁸ CTIA also proposed that

⁶ *MSS/ATC Report and Order* at ¶ 1.

⁷ ICO Opposition at 5.

⁸ *See Petition For Reconsideration of Cellular Telecommunications & Internet Association*. Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185. at 4-6 (“CTIA Petition”) (filed July 7, 2003)

handsets, as part of an integrated satellite and terrestrial network, be required to “look” first to the satellite, and only revert to the terrestrial mode if it cannot “see” the satellite.⁹ Several parties called on the Commission to reject CTIA’s proposals,¹⁰ stating that using these safeguards to achieve the goal of primacy of the satellite offering would result in inefficient use of the MSS spectrum. These statements only highlight CTIA’s concerns about the scope of the contemplated ATC service.

As stated above, multiple comments in the Oppositions of Mobile Satellite Ventures Subsidiary LLC, ICO Global Communications Limited, Globalstar, L.P., and The Boeing Company, magnify CTIA’s concerns. Contrary to Globalstar’s claim that the Commission wisely allowed an MSS/ATC operator to determine the most spectrally efficient way of mixing satellite and terrestrial services on a dynamic basis,¹¹ comments by MSS licensees illustrate exactly why the Commission should adopt more stringent safeguards so as to guarantee integration of services. MSV, for example, argued that “if an MSS ATC user is located within the coverage area of an ATC base station, the most efficient use of spectrum resources is achieved by allowing the user to access the base station.”¹² Under the current rules, MSS licensees are not limited on where they can build base stations, so MSV customers could almost always be “located within the coverage area of ATC Base Station,” making the integrated requirement meaningless. Additionally, since terrestrial use will almost always be more spectrally efficient than

⁹ *Id.*

¹⁰ MSV Opposition at 16; Globalstar Opposition at 6.

¹¹ Globalstar Opposition at 6.

¹² MSV Opposition at 16.

satellite use, if the Commission bases its decisions solely on spectrum efficiency, the integrated requirement again is meaningless.

MSV continues that “*satellite* capacity should be reserved for those callers who actually need access to the *satellite* . . . where ATC base stations may not provide signal coverage.”¹³ However, MSV states that, insofar as it is concerned, it is not necessary to adopt a gating factor that would ensure that ATC does not significantly decrease satellite capacity. “There is no such risk in the case of MSV because the type of dynamic frequency sharing MSV will employ to provide ATC will not result in any significant reduction in satellite capacity.”¹⁴ If there is “no risk” of “significant reduction in satellite capacity,” why does MSV need to “reserve” any satellite capacity “for those callers that actually need access to the satellite? Further, if ATC is to be truly “ancillary” to satellite, shouldn’t ATC, not satellite, be reserved for those callers who actually need access to the ATC.

Boeing states that the Commission should dismiss CTIA’s “look first to the satellite” proposal, because “in any modern wireless communications network, user terminals continuously receive instructions from network operators regarding the location and type of base station to which it is assigned for purposes of communications and network management.”¹⁵ This process is exactly what CTIA is proposing – the MSS/ATC handset “continuously receive instructions from network operators” as to whether the satellite signal is available. If this is not required, MSS licensees will never

¹³ MSV Opposition at 16.

¹⁴ MSV Opposition at 15.

¹⁵ Boeing Opposition at 8.

utilize the satellite component in areas where ATC is employed, even if the satellite signal is available, making the “integrated” requirement irrelevant.

These interpretations as to what qualifies as an “ancillary” service are exactly why MSS licensees should be required to “look first to satellite.” If the Commission’s goal is to require MSS providers to offer more than a token level of satellite service, it should reconsider its gating criteria, along the lines proposed by CTIA, to ensure a *primary* satellite service and an *ancillary* terrestrial service.

In its Petition, CTIA also challenged the Commission’s failure to provide sufficient insight into what an “integrated ATC” service entails. The Commission only specifically addressed one of CTIA’s proposals – use of a dual-mode handset – adopting it as a safe harbor for meeting this requirement. In an illustration of what is to come for the Commission, MSS licensees already are trying to game this simple, straightforward requirement. MSV, for example, states that, “certain ‘component kits’ are a legitimate way to offer an integrated service.”¹⁶ Under MSV’s proposal, the service only would be “integrated” when a component is attached. The ATC *user* would need to attach a separate antenna booster to access MSV’s satellite, in essence placing the burden on MSV’s customers to satisfy the licensee’s “integrated” requirement. Globalstar also places the burden of “integration” on the customer, allowing “each individual user to select whether to use the satellite mode first, or the terrestrial mode first, or to use whatever default mode the operator decides to implement as the preferred mode.”¹⁷ This type of “gaming” of the “integrated” requirement is exactly what CTIA feared when it submitted its Petition for Reconsideration.

¹⁶ MSV Opposition at 17.

¹⁷ Globalstar Opposition at 7

CTIA also questioned the Commission’s decision not to address CTIA’s call for no “ATC-only subscriptions.” These criteria were proposed to ensure MSS licensees seeking ATC authority will incorporate and integrate ATC into their satellite offering, making the satellite system primary and the terrestrial system ancillary. MSV opposes such a requirement, stating that it may hinder its ability to get funding.¹⁸ While Globalstar calls its proposed services integrated, tellingly, it also argues against CTIA’s proposal of no ATC-only plans.¹⁹ These requests shed light on proposed business and marketing plans and on MSS licensees interpretation of “ancillary.” If MSS licensees did not intend to offer two distinct services that are not integrated, why would they have concerns about a ban on ATC-only subscriptions?

Based on the comments of the opposing parties, CTIA reiterates its belief that additional gating criteria are necessary. As CTIA argued in its Petition, the Commission did not sufficiently address, or did not address at all, the concerns raised by CTIA in its December letter to the Commission when it adopted the MSS/ATC Report and Order. If the Commission’s intent is to do more than simply require licensees to pay “lip service” to the stated goal of maintaining ATC service as “ancillary,” it must reconsider its gating criteria and adopt more rigorous requirements than those contained in the MSS/ATC Order. The minimal enhancements to the gating criteria proposed by CTIA will benefit the public by ensuring that “MSS remains first and foremost a satellite service,”²⁰ while providing MSS licensees with certainty as they file for ATC authority.

¹⁸ MSV Opposition at 17.

¹⁹ Globalstar Opposition at 8.

²⁰ *Id.* at ¶ 88.

III. COMMENTS IN THE OPPOSITIONS CONFIRM THAT THE COMMISSION SHOULD CLARIFY CERTAIN AMBIGUITIES IN THE ORDER

A. Personal Data Assistants And Other Computing Devices Should Be Included In The Integrated Service Offering Requirements

In the *MSS/ATC Report and Order*, the Commission stated that MSS ATC applicants “must make an affirmative showing to the Commission that their ATC service offering is truly integrated with their MSS offering.”²¹ CTIA argued in its petition that there is no reason to treat PDAs or other computing devices that contain an MSS offering with an ATC component any differently than a handset with the same functionality. ICO Global Communications disagrees, stating that “the Commission should resist the call to re-regulate customer premises equipment . . .”²² ICO misinterprets CTIA’s intention.

As personal computing devices and PDAs continue to gain acceptance and market share, it appears likely that additional wireless functionalities will continue to be integrated with these devices and may – in the future – contain an MSS component. CTIA believes that the Commission should uniformly regulate the MSS and ATC *service* offerings. Accordingly, CTIA urges the Commission to delete footnote 229 from the *MSS/ATC Report and Order* to clarify that all devices offering MSS service with ATC will be subject to the same “affirmative showing” that the ATC component is truly integrated with the MSS offering.

²¹ *MSS/ATC Report and Order* at ¶ 87.

²² ICO Opposition at 3.

B. MSS Licensees Should Not Be Able To Use The Satisfaction Of Gating Criteria And Milestones In One Band As A Means To Seek ATC Authority In Another Band.

CTIA reiterates its belief that an MSS licensee should not be able to avoid its satellite obligations – the sole reason for obtaining the license outside of the auction process – in one band by claiming it has satisfied those obligations in another band. CTIA agrees with ICO Global Communications that “no reasonable reading of the ATC Order could produce this interpretation.”²³ However, CTIA notes that several MSS licensees either have, or may seek to obtain, licenses in more than one MSS band, and that accordingly, the Commission should clarify this obligation so there is no dispute as to MSS licensees’ obligation in this regard.

²³ ICO Opposition at 10.

IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss the Oppositions of Mobile Satellite Ventures Subsidiary LLC, ICO Global Communications Limited, Globalstar, L.P., and The Boeing Company and instead reconsider the *MSS/ATC Report and Order* to the extent that CTIA proposed in its July 7, 2003, Petition for Reconsideration.

Respectfully submitted,

/s/ Diane J. Cornell

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

1250 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036
(202) 785-0081

Michael F. Altschul
Senior Vice President and General Counsel

Diane J. Cornell
Vice President for Regulatory Policy

Christopher Guttman-McCabe
Director for Regulatory Policy

Its Attorneys

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CERTIFICATE OF SERVICE

I, Christine Blomquist, hereby certify that on this 4th day of September, 2003, the foregoing Reply to Oppositions to the Petition for Reconsideration of the Cellular Telecommunications & Internet Association was filed electronically on the FCC's Electronic Comment Filing System and copies were served via email or first class mail, postage pre-paid, to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistrionix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Bryan Tramont
Senior Legal Advisor
Office of Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Bryan.tramont@fcc.gov

Paul Margie
Spectrum and International Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
paul.martgie@fcc.gov

Samuel Feder
Legal Advisor on Spectrum
and International Issues
Office of Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
sam.feder@fcc.gov

Jennifer Manner
Senior Counsel
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jennifer.manner@fcc.gov

Barry Ohlson
Legal Advisor for Spectrum and International
Issues
Office of Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
barry.ohlson@fcc.gov

John B. Muleta
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
john.muleta@fcc.gov

David Furth
Associate Bureau Chief/Counsel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
David.furth@fcc.gov

Don Abelson
Bureau Chief
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
donald.abelson@fcc.gov

Chris Murphy
Senior Legal Advisor
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Chris.Murphy@fcc.gov

Ed Thomas
Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Ed.Thomas@fcc.gov

Bruce D. Jacobs
David S. Konczal
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

William F. Alder
Vice President, Legal and Regulatory Affairs
Globalstar, L.P.
3200 Zanker Road
San Jose, CA 95134

Marylou Cahir
Boeing Satellite Systems, Inc.
The Boeing Company
P.O. Box 92919
M/C W-S10-S327
Los Angeles, CA 90009

Anna Gomez
Deputy Bureau Chief
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Anna.Gomez@fcc.gov

Breck Blalock
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Breck.blalock@fcc.gov

Bruce Franca
Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Bruce.franca@fcc.gov

Lon C. Levin
Vice President
Mobile Satellite Ventures Subsidiary LLC
10802 Park Ridge Boulevard
Reston, Virginia 20191

William D. Wallace
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Joseph P. Markoski
David A. Nall
Bruce A. Olcott
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Suzanne Hutchings
Senior Regulatory Counsel
ICO Global Communications (Holdings)
Limited
2000 Pennsylvania Avenue, NW
Suite 4400
Washington, D.C. 20006

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, D.C. 20006

/s/ Christine Blomquist